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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KAM YUEN,

Opposer,

07-28-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

v.

MARNIE GREENBERG,

Applicant.

Opposition No.: 91156690

Serial No.: 76/313593

Mark: Yuen Energetics

**APPLICANT'S ANSWER TO NOTICE OF OPPOSITION**

Marnie Greenberg ("Applicant"), by and through counsel, McKenna Long & Aldridge LLP, answers the Notice of Opposition ("Opposition") filed by Kam Yuen ("Opposer"). Applicant denies any allegations contained in the headings or unnumbered paragraphs of the Opposition. In response to the specific allegations of the Opposition, Applicant states:

1. Applicant admits that she has requested registration of the YUEN ENERGETICS trademark/servicemark ("Applicant's Mark") based on her intent to use the mark. Applicant further admits that she filed an application for Applicant's Mark with the United States Patent and Trademark Office ("USPTO") on September 18, 2001, and that Applicant's Mark was published in the *Official Gazette* on April 29, 2003. In addition, Applicant states the following:

- a. Applicant admits that she has requested registration for the identification of goods set forth in paragraph 1(a) of the Opposition.

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- b. Applicant admits that she has requested registration for the identification of goods set forth in paragraph 1(b) of the Opposition.
- c. Applicant admits that she has requested registration for the identification of goods set forth in paragraph 1(c) of the Opposition.
- d. Applicant admits that she has requested registration for the identification of goods set forth in paragraph 1(d) of the Opposition.
- d.(sic) Applicant admits that she has requested registration for the identification of goods set forth in paragraph 1(d) of the Opposition.
- f.(sic) Applicant admits that she has requested registration for the identification of services set forth in paragraph 1(f) of the Opposition.

Applicant denies the remaining allegations of paragraph 1 of the Opposition.

2. Applicant admits that she is the first user of the Yuen Energetics mark. Applicant states that, from approximately July 2000 through January 2003, Opposer used Applicant's Mark as an independent contractor for Pain Gone Energetic Medicine, L.L.C. ("Pain Gone"), of which Applicant is the President. Applicant further states that, as a result of Opposer's improper conduct as an independent contractor, on January 8, 2003,

Pain Gone terminated Opposer as an independent contractor of Pain Gone. Applicant denies the remaining allegations of paragraph 2 of the Opposition.

3. Applicant states that, by assignment dated September 12, 2002, Opposer assigned any and all rights and goodwill in the Yuen Energetics mark, to the extent any existed, to Applicant. Applicant denies the remaining allegations of paragraph 3 of the Opposition.

4. Applicant states that her intent-to-use application, Serial No. 76313593, was filed with the USPTO on September 18, 2001. Applicant further states that the remaining allegations of paragraph 4 of the Opposition are conclusions of law or other non-factual allegations and require no response from Applicant. However, to the extent the allegations can be construed against Applicant, Applicant denies them.

5. Applicant states that "Opposer's Mark" is not defined in the Opposition. Applicant further states that the identification of goods and services in Applicant's application speaks for itself and any attempt to characterize it is denied. Applicant denies the remaining allegations of paragraph 5 of the Opposition.

6. Applicant admits that Applicant's Mark is "YUEN ENERGETICS," and that "Yuen" is Opposer's surname. Applicant denies the remaining allegations of paragraph 6 of the Opposition.

7. Applicant states that "Opposer's Mark" is not defined in the Opposition. Applicant denies the remaining allegations of paragraph 7 of the Opposition.

8. Applicant denies the allegations of paragraph 8 of the Opposition.

As to the unnumbered paragraphs of the Opposition, Applicant denies all allegations and denies that Opposer is entitled to the requested relief.

**GENERAL DENIAL**

Applicant denies each and every allegation contained in the Opposition that is not specifically admitted to be true.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Opposition fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Opposer ratified, agreed to, and accepted all actions and/or omissions by Applicant.

**THIRD AFFIRMATIVE DEFENSE**

Opposer's claims are barred, in whole or in part, by the doctrine of waiver, in that Opposer has waived by its conduct, representations, and omissions any claim it may have had against Applicant involving the matters that are the subject of the Opposition.

**FOURTH AFFIRMATIVE DEFENSE**

Opposer is estopped to assert the claims contained in Opposer's Opposition by reason of Opposer's own acts or omissions.

**FIFTH AFFIRMATIVE DEFENSE**

Opposer's claim for relief is barred by the doctrine of unclean hands.

**SIXTH AFFIRMATIVE DEFENSE**

Opposer consented to the alleged use of his name, photograph, and likeness.

**SEVENTH AFFIRMATIVE DEFENSE**

To the extent that Opposer ever had a protectable trademark or service mark, Opposer abandoned such interest.

**EIGHTH AFFIRMATIVE DEFENSE**

Opposer's claims are barred by additional defenses that may arise during the course of this Opposition, which this Applicant reserves the right to assert.

WHEREFORE, Applicant respectfully requests that this Board dismiss the Opposition and approve the registration of Applicant's Mark.

Respectfully submitted,



Shari L. Klevens

Dated: July 28, 2003

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Marnie Greenberg

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of July, 2003, I caused a true copy of the foregoing **Applicant's Answer to Notice of Opposition** to be served via first class mail, postage prepaid, upon:

**Thomas T. Chan, Esq.**  
**Ronald M. St. Marie, Esq.**  
**Paul N. Tauger, Esq.**  
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Shari L. Klevens

KAM YUEN,

V.

**Applicant.**

Mark: Yuen Energetics

Stevens

Shari L. Klevens

Typed or printed name of person mailing  
correspondence